

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**NORMA J. SALTER**  
Claimant

VS.

**MAPLE HEIGHTS NURSING AND  
REHABILITATION CENTER**  
Respondent

AND

**HARTFORD ACCIDENT & INDEMNITY  
INSURANCE COMPANY**  
Insurance Carrier

Docket No. 1,014,152

**ORDER**

Respondent and its insurance carrier appealed the February 19, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Claimant requested a preliminary hearing order for payment of per diem in connection with travel to obtain authorized medical treatment. Judge Benedict granted claimant's request and ordered respondent to pay claimant \$1,740.00 in per diem expense, which represents 116 days where the claimant traveled outside the City of Sabetha to obtain authorized medical treatment.

Respondent and its insurance carrier contend Judge Benedict erred. They argue the ALJ exceeded his jurisdiction and authority by ordering payment of per diem for authorized treatment and improperly interpreted K.S.A. 44-510(h)(a) to include per diem

charges for any trip made for treatment "to a place outside the community in which such employee resides."<sup>1</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Appeals Board (Board) finds and concludes:

The issue raised by respondent and its insurance carrier is not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.<sup>2</sup> Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.<sup>3</sup>

Issues concerning medical treatment including whether the employer is failing to provide medical treatment or failing to pay expenses associated with treatment the employer is providing are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise question of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

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<sup>1</sup> K.S.A. 44-510h(a).

<sup>2</sup> K.S.A. 2003 Supp. 44-551(b)(2)(A).

<sup>3</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>4</sup>

Respondent and its insurance carrier's argument that the ALJ exceeded his jurisdiction by interpreting or misinterpreting a statute concerning the furnishing of medical treatment and the payment of expenses related to obtaining such treatment is without merit. At a preliminary hearing, a judge has the authority to determine such issues and to order the payment of a per diem. Accordingly, the ALJ did not exceed his jurisdiction.

**WHEREFORE**, the Appeals Board dismisses this appeal.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2004.

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BOARD MEMBER

c: James B. Biggs, Attorney for Claimant  
Heather Nye, Attorney for Respondent and Hartford Accident & Indemnity Ins. Co.  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).